

California Administrative Procedure Act (APA)
Adoption and Review of Emergency Regulations
Statutory Changes Enacted by AB 1302 (Jerome Horton, 2006)

The following changes in statute apply only to emergency regulations *initially* submitted to the Office of Administrative Law OAL on or after January 1, 2007. Any action on emergency regulations first submitted to OAL before January 1, 2007, including any request for readoption of those regulations, will be subject to the APA provisions as they existed prior to the enactment of AB 1302. AB 1302 also made minor revisions, not specifically related to emergency regulations, to Government Code sections 11340.85 and 11350. Those changes are not shown in this document.

Provisions added to California statutes are shown in *italics*.

Provisions deleted from California statutes are shown in ~~strikeout type~~.

Government Code section 11342.545. *"Emergency" means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.*

Government Code section 11346.1. (a) (1) The adoption, amendment, or repeal of an emergency regulation is not subject to any provision of this ~~chapter~~ *article or Article 6 (commencing with Section 11349)*, except this section and ~~Section Sections 11349.5 and 11349.6~~.

(2) *At least five working days before submitting an emergency regulation to the office, the adopting agency shall, except as provided in paragraph (3), send a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. The notice shall include both of the following:*

(A) The specific language proposed to be adopted.

(B) The finding of emergency required by subdivision (b).

(3) An agency is not required to provide notice pursuant to paragraph (2) if the emergency situation clearly poses such an immediate, serious harm that delaying action to allow public comment would be inconsistent with the public interest.

(b) (1) Except as provided in subdivision (c), if a state agency makes a finding that the adoption of a regulation or order of repeal is necessary ~~for the immediate preservation of the public peace, health and safety or general welfare~~, *to address an emergency*, the regulation or order of repeal may be adopted as an emergency regulation or order of repeal.

(2) Any finding of an emergency shall include a written statement ~~which~~ *that* contains the information required by paragraphs (2) to (6), inclusive, of subdivision (a) of Section 11346.5 and a description of the specific facts ~~showing the need for immediate action~~ *demonstrating the existence of an emergency and the need for immediate action, and demonstrating, by substantial evidence, the need for the proposed regulation to effectuate the statute being implemented, interpreted, or made specific and to address only the demonstrated emergency. The finding of emergency shall also identify each technical, theoretical, and empirical study, report, or similar document, if any, upon which the agency relies.* The enactment of an urgency statute shall not, in and of itself, constitute a need for immediate action.

A finding of emergency based only upon expediency, convenience, best interest, general public need, or speculation, shall not be adequate to demonstrate the existence of an emergency. If the situation identified in the finding of emergency existed and was known by the agency adopting the emergency regulation in sufficient time to have been addressed through nonemergency regulations adopted in accordance with the provisions of Article 5 (commencing with Section 11346), the finding of emergency shall include facts explaining the failure to address the situation through nonemergency regulations.

(3) The statement and the regulation or order of repeal shall be filed immediately with the office.

(c) Notwithstanding any other provision of law, no emergency regulation that is a building standard shall be filed, nor shall the building standard be effective, unless the building standard is submitted to the California Building Standards Commission, and is approved and filed pursuant to Sections 18937 and 18938 of the Health and Safety Code.

(d) The emergency regulation or order of repeal shall become effective upon filing or upon any later date specified by the state agency in a written instrument filed with, or as a part of, the regulation or order of repeal.

(e) No regulation, amendment, or order of repeal *initially* adopted as an emergency regulatory action shall remain in effect more than ~~120~~ 180 days unless the adopting agency has complied with Sections 11346.2 to 11347.3, inclusive, either before adopting an emergency regulation or within the ~~120~~ 180-day period. The adopting agency, prior to the expiration of the ~~120~~ 180-day period, shall transmit to the office for filing with the Secretary of State the adopted regulation, amendment, or order of repeal, the rulemaking file, and a certification that Sections 11346.2 to 11347.3, inclusive, were complied with either before the emergency regulation was adopted or within the ~~120~~ 180-day period.

(f) ~~In the event~~ If an emergency amendment or order of repeal is filed and the adopting agency fails to comply with subdivision (e), the regulation as it existed prior to the emergency amendment or order of repeal shall thereupon become effective and after notice to the adopting agency by the office shall be reprinted in the California Code of Regulations.

(g) ~~In the event~~ If a regulation is originally adopted and filed as an emergency and the adopting agency fails to comply with subdivision (e), this failure shall constitute a repeal ~~thereof of the regulation~~ and after notice to the adopting agency by the office, shall be deleted.

(h) The office ~~shall not file an emergency regulation with the Secretary of State if the emergency regulation~~ may approve not more than two readoptions, each for a period not to exceed 90 days, of an emergency regulation that is the same as or substantially equivalent to an emergency regulation previously adopted by that agency, ~~unless the director expressly approves the agency's readoption of the emergency regulation.~~ Readoption shall be permitted only if the agency has made substantial progress and proceeded with diligence to comply with subdivision (e).

Government Code section 11349.6. (a) ~~In the event the~~ If the adopting agency has complied with Sections 11346.2 to 11347.3, inclusive, prior to the adoption of the regulation as an emergency, the office shall approve or disapprove the regulation in accordance with this article.

(b) Emergency regulations adopted pursuant to subdivision (b) of Section 11346.1 shall be reviewed by the office within 10 calendar days after their submittal to the office. *After posting a notice of the filing of a proposed emergency regulation on its Internet Web site, the office shall allow interested persons five calendar days to submit comments on the proposed emergency*

regulations unless the emergency situation clearly poses such an immediate serious harm that delaying action to allow public comment would be inconsistent with the public interest. The office shall ~~not file~~ *disapprove* the emergency regulations ~~with the Secretary of State~~ if it determines that the ~~regulation is not necessary for the immediate preservation of the public peace, health and safety, or general welfare~~ *situation addressed by the regulations is not an emergency*, or if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines the agency failed to comply with ~~subdivisions (b) and (c) of~~ Section 11346.1.

(c) If the office considers any information not submitted to it by the rulemaking agency when determining whether to file emergency regulations, the office shall provide the rulemaking agency with an opportunity to rebut or comment upon that information.

(d) Within 30 working days of the filing of a certificate of compliance, the office shall review the regulation and hearing record and approve or order the repeal of an emergency regulation if it determines that the regulation fails to meet the standards set forth in Section 11349.1, or if it determines that the agency failed to comply with this chapter.

[NOTE: The following section applies only to the Department of Corrections and Rehabilitation]

Penal Code section 5058.3. (a) Emergency adoption, amendment, or repeal of a regulation by the director shall be conducted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except with respect to the following:

(1) Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the initial effective period for an emergency adoption, amendment, or repeal of a regulation shall be 160 days.

(2) Notwithstanding subdivision (b) of Section 11346.1 of the Government Code, no showing of emergency is necessary in order to adopt, amend, or repeal an emergency regulation if the director instead certifies, in a written statement filed with the Office of Administrative Law, that operational needs of the department require adoption, amendment, or repeal of the regulation on an emergency basis. The written statement shall include a description of the underlying facts and an explanation of the operational need to use the emergency rulemaking procedure. This paragraph provides an alternative to filing a statement of emergency pursuant to subdivision (b) of Section 11346.1 of the Government Code. It does not preclude filing a statement of emergency. This paragraph only applies to the initial adoption and one readoption of an emergency regulation.

(3) Notwithstanding subdivision (b) of Section 11349.6 of the Government Code, the adoption, amendment, or repeal of a regulation pursuant to paragraph (2) shall be reviewed by the Office of Administrative Law within 20 calendar days after its submission. In conducting its review, the Office of Administrative Law shall accept and consider public comments for the first 10 calendar days of the review period. Copies of any comments received by the Office of Administrative Law shall be provided to the department.

(4) *Regulations adopted pursuant to paragraph (2) of subdivision (a) are not subject to the requirements of paragraph (2) of subdivision (a) of Section 11346.1 of the Government Code.*

(b) It is the intent of the Legislature, in authorizing the deviations in this section from the requirements and procedures of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, to authorize the department to expedite the exercise of its power to implement regulations as its unique operational circumstances require.